No. SC85582

IN THE
SUPREME COURT OF MISSOURI
EN BANC

STATE OF MISSOURI,

Appellant,

vs.

LESLIE A. BROWN,

Respondent.

Appeal from the Circuit Court of Greene County,
Missouri, Division No. V
Honorable Calvin R. Holden, Judge

BRIEF OF APPELLANT

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ORAL ARGUMENT REQUESTED

I N D E X

TABLE OF AUTHORITIES

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JURISDICTIONAL STATEMENT

The State of Missouri appeals from an order of the Circuit Court of Greene County, dismissing an information charging the respondent with the class A misdemeanors of failure to report child abuse to the Division of Family Services, §§210.115.1 and 210.165.1, RSMo 2000; and failure to report child abuse to a physician, §§210.120 and 210.165.1, RSMo. 2000. Because the order of the Circuit Court forecloses any further prosecution of this case, State v. Burns, 994 S.W.2d 941, 942 (Mo. banc 1999), and because no possible outcome of the appeal of this pretrial dismissal can result in double jeopardy, Peiffer v. State, 88 S.W.3d 439, 444-445 (Mo.banc 2002), the present appeal is authorized under §547.200.2, RSMo. 2000.

This appeal involves the validity of §§210.115 and 210.120, which were declared by the Circuit Court to be unconstitutionally vague in violation of the United States and Missouri Constitutions. Therefore, the Supreme Court of Missouri has exclusive appellate jurisdiction over this appeal. Article V,§3, Missouri Constitution (as amended 1982).

STATEMENT OF FACTS

The respondent, Leslie A. Brown, was charged by Information on February 19, 2003, with the class A misdemeanors of failure to report child abuse to the Division of Family Services, §210.115.1 RSMo. and failure to report child abuse to a physician, §210.165.1 RSMo 2000 (L.F. p.1). The Information and accompanying Probable Cause Statement alleged that Respondent, a nurse at Cox South Hospital in Springfield, Missouri, had been made aware of injuries to two-year-old Dominic James that provided reasonable cause to believe that James had been abused, but had failed to report this fact to the Division of Family Services or to the physician in charge of the child's treatment (L.F. p. 3). The Probable Cause Statement specifically alleged that the child had been found at the scene of an emergency call unresponsive, not breathing, and posturing. In addition, rescue personnel noted " a series of small, round dime to quarter sized bruises running parallel along the boy's spine", as well as a red bruise under the child's eye (L.F. p. 3). Respondent admitted that she had been made aware of the bruises by paramedics but had failed to make any notes relating to the bruises on her medical reports (L.F. p. 3). It was further alleged that, four days after his release from the hospital, Dominic James died of "abusive head trauma", (L.F. p. 3).

On February 19, 2003, formal arraignment was waived. On February 20, 2003, Respondent filed a Motion to Dismiss and for Bill of Particulars (L.F. p. 17). Despite the earlier waiver, on March 21, 2003, Respondent appeared with her counsel and again waived

formal arraignment, entering a plea of not guilty. Respondent filed a pleading entitled "Legal Suggestions in Support of Motion to Dismiss on Grounds of Unconstitutionality and Facts". Although this document and her subsequent pleading refer to a Motion to Dismiss on Grounds of Unconstitutionality, supposedly filed "on or about April 4, 2003", neither the docket sheet nor the Court file reflect such a pleading. On April 11, 2003, Respondent filed a Second Motion to Dismiss on Ground (sic) of Constitutionality (L.F. p. 19), alleging a violation of her rights under the Missouri Constitution, Article 1,§18(a) and the Fifth Amendment to the United States Constitution.

On April 11, 2003, a hearing was held on pending motions, including Respondent's Second Motion to Dismiss on Ground of Constitutionality. Over Appellant's objections as to the relevancy of expert witnesses on a matter of law, testimony was taken of several witnesses who rendered their opinion on the constitutionality of the statute (Tr. p. 8). Former Missouri State Senator Emory Melton testified that he felt the statute was unconstitutional because of the word "suspect" (Tr. p. 42). He noted, however, that he had voted in favor of the bill when it was before the legislature. (Tr. p. 45). Dr. Alice Bartee, a political science professor at Southwest Missouri State University, testified that she felt the statute was vague and overbroad (Tr. pp. 64, 65). Dr. Bernard Kennetz, Jr., an emergency room physician, testified that the statute was subject to varying interpretations of 'reasonable cause to suspect' (Tr. p. 82). Barbara Schaffitzel, a retired nursing supervisor, testified that she could follow and understand the statute "as a whole" (Tr. p. 96), and the nurses had developed a degree of comfort with the statute (Tr. p. 98).

The Information was amended on April 28, 2003 and accepted by the Court on May 23, 2003. Appellant filed its Response to Defendant's Motions to Dismiss on Grounds of Unconstitutionality on May 15, 2003 and Respondent replied with Supplemental Legal Suggestions on May 28, 2003.

On September 9, 2003, the Circuit Court entered an Order finding §§210.115.1 and 210.120, RSMo. 2000, unconstitutionally vague (L.F. p. 24). The Notice of Appeal followed on September 15, 2003 (L.F. p. 28).

POINT RELIED ON

I.

The trial court erred as a matter of law in granting Respondent's Motion to Dismiss on grounds that §§210.115 and 210.120 RSMo. 2000 were unconstitutional because the statutes are not void for vagueness under the Fifth Amendment as applied through the Fourteenth Amendment to the United States Constitution or Article 1, §18 a of the Missouri Constitution in that the terms 'abuse' and 'reasonable cause to suspect' as used in the statutes are commonly understood and applied both in Missouri law and the law of other states and provided Respondent adequate notice of her obligations as a mandated reporter.

Cocktail Fortune, Inc. v. Supervisor of Liquor Control, 994 S.W.2d 955 (Mo. banc,1999)

Stiffelman v. Abrams, 655 S.W.2d 522 (Mo. banc 1983)

People v. Cavaiani, 432 N.W.2d 409 (Mich.App. 1988)

State v. Hurd, 400 N.W.2d 42 (Wis.App. 1986)

Section 210.115 RSMo 2000

Section 210.120 RSMo 2000

Section 210.135 RSMo. 2000

ARGUMENT

I.

The trial court erred as a matter of law in granting Respondent's Motion to Dismiss on grounds that §§210.115 and 210.120 RSMo. 2000 were unconstitutional because the statutes are not void for vagueness under the Fifth Amendment as applied through the Fourteenth Amendment to the United States Constitution or Article 1, §18 a of the Missouri Constitution in that the terms 'abuse' and 'reasonable cause to suspect' as used in the statutes are commonly understood and applied both in Missouri law and the law of other states and provided Respondent adequate notice of her obligations as a mandated reporter.

Standard of Review

The trial court in this case has held that §§210.115 and 210.120 RSMo. are unconstitutionally vague and dismissed the pending charges against the respondent. The State has appealed that decision. Because the issues involve questions of law, the review is *de novo* and no deference need be given to the trial court's reasoning. State v. Smith, 988 S.W.2d 71, 75 (Mo.App. 1998). The appellate court must presume that a contested statute is constitutional and find it unconstitutional only if it clearly contravenes a constitutional provision. State v. Kinder, 89 S.W.3d 454 (Mo. 2002); State v. Young, 695 S.W.2d 882 (Mo. banc 1985). A statute must be interpreted to be consistent with the constitution of the United States if at all possible and any doubts concerning the validity of the statute are to be resolved in favor of validity. Young, 695 S.W.2d at 883, 885.

Purpose of the Statute

It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. It is necessary for laws to give fair and adequate notice of proscribed punishment to protect against arbitrary and discriminatory enforcement. Cocktail Fortune, Inc. v. Supervisor of Liquor Control**,** 994 S.W.2d 955, 957 (Mo. banc, 1999). See also, Connally v. General Construction Company, 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 (1926); Kolender v. Lawson**,** 461 U.S. 352, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983). The test is

> whether the language conveys to a person of ordinary intelligence a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. However, neither absolute certainty nor impossible standards of specificity are required in determining whether terms are impermissibly vague. [citations omitted]

Cocktail Fortune, at 957.

While there is no question that clarity is an important requisite of law, there is also no question that the State of Missouri has a compelling interest in protecting the welfare of children who may be subject to abuse, even against a parent's liberty interest in being free to raise children without government intervention. Myers v. Morris, 810 F.2d 1437, 1462 (8th Cir.), cert. denied, 484 U.S. 828, 108 S.Ct. 97, 98 L.Ed.2d 58 (1987). The Supreme Court of Missouri noted in State ex rel. D.M. v. Hoester, 681 S.W.2d 449, 452 (Mo. banc, 1984), that the problem of child abuse had "reached epidemic proportions". Missouri is not

alone in its affliction. In its review of the mandatory child abuse reporting law in New Jersey, the New Jersey Superior Court noted that, as of 1994, "more than one million reports are made annually" in the United States and those figures might be "only the tip of the iceberg". F.A., P.A., and M.N., M.A. and C.A. v. W.J.F., Jr. and S.F., 280 N.J.Super. 570, 656 A2d 43, 46 (1995). In response to the problem, first enunciated in a 1962 article in The Journal of the American Medical Association entitled "The Battered Child Syndrome", all of the states had enacted child abuse reporting statutes by 1966, Krause, "Child Abuse and Neglect Reporting Legislation in Missouri, 42 Mo.L.R. 207 (1977).

As a result of federal legislation which tied funding to state enactment of mandatory child abuse reporting laws, Missouri, along with other states, enacted a new child abuse reporting law which made reporting mandatory, not permissive, and extended the list of mandatory reporters from physicians to those persons most likely to have contact with abused children. Krause, pp. 214, 216. Although there are some differences from state to state, the language of the Missouri statute, including the word "abuse" and the phrase "reasonable cause to suspect" or its predecessor, "reasonable cause to believe" is used in the majority of state laws regarding mandatory reporting of child abuse. The related term "suspected abuse" was also used in the federal legislation, and was synonymous with the state language in the view of Missouri's Attorney General at the time, John Danforth. Rothman, Att.Gen.Op. #147 (1975). The same language was adopted by the Missouri Legislature when it passed the Omnibus Nursing Home Act, §198.006 *et seq.* in 1979. See, Stiffelman v. Abrams, 655 S.W.2d 522, 533 (Mo. banc, 1983).

Although the Missouri statutes do not contain a statement of purpose relating to child abuse, when these statutes are considered along with the provision for immunity for non-malicious reports, §210.135 RSMo., it is clear that the legislature intended to encourage reporting of suspected abuse at an early stage and thereby initiate investigation which might prevent further harm. In Storch v. Silverman, 186 Cal.App.3d 671, 676, 231 Cal.Rptr.27 (1986), the California Court of Appeal examined the state's mandatory reporting law, a law similar to that in Missouri, and its grant of absolute immunity to mandated reporters.[1]or reasonably suspect abuse. NAIC, "Mandatory Reporters of Child Abuse and Neglect", 2003. The court noted:

> The state has a strong interest in the prevention of child abuse. Since the child abuser often repeats the abuse, identification of a victim offers an opportunity for intervention by authorities. However, identification is often difficult due to the natural characteristics of the child and the private or special circumstances in which the abuse may occur. In order to address this serious problem, the California Legislature has enacted a comprehensive reporting scheme...requiring persons in positions where abuse is likely to be detected to report promptly all suspected and known instances of child abuse to authorities for follow-up investigation.

[1] Penal Code section 11166(a), (c); §11165.7(a) requires persons in positions where abuse is likely to be detected to report when they have knowledge of or observe abuse; or know

The protection of vulnerable populations unable to protect themselves, whether children or infirm and elderly adults, is a valid exercise of the state's police power. Stiffelman v. Abrams, 655 S.W.2d 522, 528 (Mo.banc, 1983). In this case, it was the trial court's obligation, therefore, to try and give effect to an important and even compelling state interest when interpreting the statutes.

Applying Principles of Statutory Construction

In the instant case, the trial court held that the statutes were not constitutional because they did not "set out the explicit standards necessary to avoid arbitrary or discriminatory application" and did not clearly appraise the defendant of what conduct was necessary to be in compliance. The Court's Order is not specific as to which portion or what language of the statute is too vague. In paragraphs 5 and 6 of the Order (L.F. pp. 26-27) however, the focus appears to be on the use of the phrase "reasonable cause to suspect abuse". It is a fundamental principle of statutory construction that the statute should be interpreted, wherever possible, in a manner to effectuate the purpose of the statute. In Cocktail Fortune, Inc. v. Supervisor of Liquor Control, op cit., the Missouri Supreme Court noted

> If the law is susceptible to any reasonable and practical construction which will support it, it will be held valid, and...the courts must endeavor, by every rule of construction, to give it effect.

Quoting City of St. Louis v. Brune, 520 S.W.2d 12, 16-17 (Mo. 1975). See also, State v.

Duggar, 806 S.W.2d 407, 408 (Mo. banc, 1991).

In State v. Schleiermacher, 924 S.W.2d 269, 275 (Mo. banc 1996) the court was asked to determine whether "lingering outside" was unconstitutionally vague as used in the Adult Abuse Act, §455.010 RSMo. The Court noted that statutes are presumed to be constitutional and were to be held otherwise only if they clearly contravened some constitutional provision. It then found that the term was not unconstitutional, and stated that

> Due process requires no more than that the statute convey a sufficiently definite warning...when measured by common understanding and practices...A word or phrase is not unconstitutionally vague because of some ambiguity. [citations omitted]

To determine whether or not the phrase or term used in the statute is unconstitutionally vague in that it has a meaning not commonly understood, courts have generally used one or more of the following techniques. One such technique, used by the Court in Schleiermacher, is to look at the dictionary definition. See also, Cocktail Fortune, Inc., *op cit*. (the phrase 'oral copulation'); State v. Allen, 905 S.W.2d 874, 877 (Mo. banc, 1995) (the word 'beating'); Doe v. Missouri Department of Social Services, 71 S.W.3d 648, 650-51 (Mo.App.E.D. 2002) (the terms 'well-being' and 'physical injury'). Applying this technique to the present case, according to the American Heritage Dictionary, Second College Edition, the term 'suspect' means 'to surmise to be true or probable'. This is clearly the meaning intended by the statute and the common understanding of the word by persons of ordinary intelligence.

Another technique of statutory construction is to look at how other courts have addressed this issue. For example, other state courts have examined variants of the word 'suspect', including 'reasonable cause to suspect' and found them to be sufficiently understandable by a person of ordinary intelligence. In State v. Hurd, 400 N.W.2d 42 (Wis.App. 1986), the defendant was charged with and convicted of failure to comply with a mandatory child abuse reporting law similar to that in Missouri.[2]reasonable cause to suspect or the person has reason to believe there is abuse. On appeal, the defendant challenged the law on due process grounds alleging that the statute's use of the terms 'suspect' and 'reasonable cause to suspect' were unconstitutionally vague. The Wisconsin Court referred to Black's Law Dictionary 1298 (5th ed. 1981) which defined 'suspicion' as 'belief or opinion based upon facts or circumstances which do not amount to proof'. The phrase 'reasonable cause to suspect', according to the Court,

> is a readily ascertainable and understandable standard that involves a belief based on evidence but short of proof, that an ordinary person would reach as to the existence of child abuse. Therefore [it] sufficiently alerts a person of ordinary intelligence as to what conduct is required.

Hurd, at p. 46

In People v. Cavaiani, 432 N.W.2d 409 (Mich.App. 1988), a psychologist was charged with failing to comply with a Michigan statute requiring him to report suspected

[2] Wisconsin statute W.S.A. §48.981(2), (2m)(c)-(e) requires a report when there is

child abuse. He argued that the phrase 'reasonable cause to suspect' as used in the statute was not clearly defined and did not give him fair notice of what conduct was proscribed.[3]reasonable cause to suspect abuse. The Michigan Court stated that the statute was not vague when the meaning of the contested words could be determined by reference to court decisions, common law, dictionaries or treatises. In the case of "reasonable cause to suspect", however, the Court held that the words

> speak for themselves and provide fair notice of the conduct
> expected in reporting suspected child abuse.

Cavaiani at 714.

In Morris v. Texas, 833 S.W.2d 624 (Tex., 1992) the Texas Court of Appeals examined a vagueness challenge to Texas' mandatory child abuse reporting law which required only "cause to suspect" abuse. [4] In that case, the Texas Court held that the statute was not void on its face and held that there were sufficient facts in the case at hand to indicate that the defendant had cause to believe that abuse had occurred.

Yet another approach to statutory construction is to see how our courts have interpreted and applied similar language in other statutes. Although the Supreme Court of Missouri has not addressed the constitutionality of the mandatory reporting law directly, it has upheld the Omnibus Nursing Home Act, §198.006 *et seq.,* against claims that it was

[3]Michigan statutes M.C.L.A. §722.623 (1), (8); 722.631 require reports when there is

[4] V.T.C.A. Family Code, §§ 34.01, 34.02, 34.07.

unconstitutionally vague for the use of the term "abuse". Stiffelman v. Abrams, *op cit.* The Missouri Supreme Court noted that the definition of 'abuse' in the Omnibus Nursing Home Act was "essentially the same as that used in the Missouri child abuse law, §210.110.1(1) RSMo. 1978, and in child abuse laws of other states." Both statutes define 'abuse' to mean "any physical injury...inflicted...other than by accidental means." §210.110 RSMo. The Court suggested that the lack of precision in the legislature's definitions of the terms was deliberate and reflected the general belief that there was no need for further explication. "There is probably little dispute," the Court noted, citing Krause, *op. cit.*,

> that the term 'physical injury' is one of common understanding.
> It would include such things as bruises, lacerations, abrasions,
> welts, choke marks, burns, bites and fractures." Stiffelman at 533.

A background paper which accompanied the Missouri statute in its original form as House Bill 578 stated that the term 'physical injury' should be interpreted according to its common understanding. Governor's Committee for Children and Youth, HB 578–Child abuse and Neglect–A Background Paper 2 (February 7, 1975) quoted in Krause, p. 222. Paulsen, in "Child Abuse Reporting Laws: The Shape of the Legislation", 67 Columbia Law Review 1, 12 (1967), argues that it is best to have "no arbitrary limits" on the definition of abuse since

> Society knows what abuse is, even without a specific definition,
> and may thus approach the problem with the individual
> characteristics and the best interests of the child as the primary

considerations....Surely the terms 'abuse' or 'neglect'

are best left undefined. The varieties of serious abuse are all

embraced by statutory language which speaks of physical injuries.

As the Supreme Court of Missouri said in State v. Allen, 905 S.W.2d 874, 877 (Mo. banc, 1995):

It is, of course, virtually impossible for the legislature to employ the

English language with sufficient precision to satisfy a mind intent

on conjuring up hypothetical circumstances in which commonly

understood words seem momentarily ambiguous. The Constitution,

however, does not demand that the General Assembly use words that

lie beyond the possibility of manipulation. Instead, the constitutional

due process demand is met if the words used bear a meaning commonly

understood by persons of ordinary intelligence.

Reasonable Man Standard

If the word 'abuse' is one that is commonly understood by persons of ordinary intelligence and readily applied in normal contexts, the same is true of "reasonable cause to suspect". Besides examining a dictionary, another way that the vagueness of a particular phrase may be evaluated is by examining its use in various contexts and the likelihood that it had been understood Jordan v. DeGeorge, 341 U.S. 223, 71 S.Ct. 703, 95 L.Ed. 886 (1951). The phrase "reasonable cause to suspect", "reasonable cause to believe" or variations of the phrase have been part of Missouri law for over a hundred years and have

been commonly understood by Missourians in many different legal contexts. A review of Missouri case law reveals that the phrase has been used as part of Missouri's self defense instructions State v. Bushong, 246 SW. 919 (Mo. 1922); Missouri's liquor control law, Johnson v. Wright, 478 S.W.2d 277 (Mo. 1972); Missouri's Public Works Prompt Pay Statute, City of Independence v. Kerr Construction Paving Co., 957 S.W.2d 315 (Mo.App.W.D. 1997); and the Bankruptcy Act of 1898 Swartz v. Frank, 82 S.W.60 (Mo. 1904) among other applications. In addition, the variant phrase "reasonable suspicion" has been part of the nation's search and seizure law vocabulary since 1969. The term 'reasonable suspicion' as used by law enforcement officers on a daily basis is not unlike the use of the term 'reasonable cause to suspect' in the mandated reporter statute as both depend on the 'reasonable man' and his/her ability to make sensible determinations based on the facts and circumstances which confront them in a variety of critical situations.

At the hearing in this case, Respondent offered the testimony of Dr. Bernard Kennetz, Jr., an emergency room physician of nine years experience who testified without explanation that it was "outrageous" to prosecute anyone, civilly or criminally, on the basis of reasonable cause to suspect abuse (Tr. p. 82). Almost immediately, however, he testified that "If I reasonably suspect, I report", (Tr. p. 85). In fact, Dr. Kennetz testified that he had reported suspected physical abuse on ten to fifteen occasions, including occasions, as here, where there were bruises. He did not, he assured the Court, report every bruise. Instead, he reported only those situations where "there was a reason for me to report that" (Tr. p. 88). Despite his assertions of lack of understanding, Dr. Kennetz in practice applied the proper

standard: that is, the reasonable physician, with his knowledge and experience, and based on the facts and circumstances. See, Krause, at p. 235.

The reasonable man standard has been part and parcel of legal analysis when examining issues of criminal and civil negligence not just in Missouri, but in American jurisprudence, for decades. Variations of the reasonable man standard, including "reason to believe", "reason to suspect", "reasonable cause", "should know or have knowledge of", appear in the mandatory reporting statutes of 49 states National Clearinghouse on Child Abuse and Neglect Information, "Mandatory Reporters of Child Abuse and Neglect", 2003. In State v. Grover, 437 N.W.2d 60 (Minn. 1989), the Minnesota Supreme Court examined the validity of its mandatory reporting statute against claims that the language "reason to believe" was unconstitutionally vague and overbroad.[5]knows or has reason to believe there is abuse. The Court interpreted the statute which carried a criminal penalty for failure to report, to require a showing of criminal negligence, specifically, that a mandated reporter violated the statute if he/she had reason to know or believe that a child was being or had been abused and failed to recognize it. But, it was a violation of the statute only if that failure was "a gross deviation from the standard of care that a reasonable person would observe in the actor's situation." Grover at 63. As interpreted, the Court concluded, the statute was neither unconstitutionally vague nor unconstitutionally overbroad.

The requirements of due process are satisfied by specifying standards

[5]Minnesota statute M.S.A. §626.556, subd. 3 (a), 8 requires a report when the person

> of conduct in terms that have acquired meaning involving reasonably definite standards either according to common law or by long and general usage....Negligence as a test of criminal responsibility constitutes a sufficiently definite standard of criminal responsibility. [citations omitted] *Id.*

Wisconsin made a similar determination in State v. Hurd, *op cit*., holding that conviction of failure to report under that state's mandatory child abuse reporting law, was permitted only when, under the totality of the circumstances presented to the defendant, a prudent person would have had reasonable cause to suspect child abuse. Hurd at p. 45

The trial court in this case seems to believe that because some element of professional judgment is required by a nurse or physician in determining whether or not there is reasonable cause to suspect abuse, the statute is invalid. On the contrary, the use of professional judgment is part of the reasonable man standard in that it considers all of the facts and circumstances as well as the knowledge and experience of the reporter. Section 562.016.5 RSMo. provides:

> 5. A person 'acts with criminal negligence' or is criminally negligent when he fails to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow, and such failure constitutes a gross deviation from the standards of care which a reasonable person would exercise *in the situation*.

[Emphasis added].

Applying this standard in the instant case would require the jury or fact finder to find that the nurse or physician's failure to recognize potential abuse was a gross deviation from the behavior of a reasonable person in his/her position. Applying the trial court's definition of 'unconstitutionally vague', any statute requiring a finding of criminal negligence should likewise fall, including, among others, §565.024 (involuntary manslaughter); §568.050 (child endangerment); and §565.083.1 (third degree assault on a law enforcement officer). Furthermore, any statute, rule or instruction which used a reasonableness standard would be suspect. There is no reason to believe that child care professionals, teachers, physicians, nurses, psychologists and other medical care professionals are any less capable of determining reasonableness in the context of child abuse and neglect than are other citizens in a variety of situations where such decisions are required.

CONCLUSION

The use of the phrase 'reasonable cause to suspect abuse' in Missouri's mandatory child abuse reporting laws, §§210.115 and 210.120 RSMo., does not render these statutes void for vagueness under either the United States Constitution, Article 5 as applied to the states through the Fourteenth Amendment or under the Constitution of the State of Missouri, Article 1, §18a. The terms 'suspect' and 'abuse' are words of common understanding, particularly as the term 'abuse' is defined to mean 'physical injury' and the reasonable man standard has been used and applied by the Courts of all states in a variety of contexts. The State has a strong and compelling interest in the protection of children and the mandatory reporting law is a valuable tool in the implementation of that policy.

In view of the foregoing, Appellant submits that these statutes are constitutional and this cause should be remanded for trial.

Respectfully submitted,

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Certification of Service and of Compliance with Rule 84.06(b) and (c)

The undersigned hereby certifies that on the 3rd day of February, 2004, two true and correct copies of the foregoing brief, and one disk containing the foregoing brief, were mailed, postage prepaid, to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule 84.06(b), and that the brief contains 5,166 words.

The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus-free.

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